

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MILOW FAMILY LIMITED
PARTNERSHIP, et al.,

Plaintiffs,

Hon. Janet T. Neff

v.

Case No. 1:10-cv-00325

RNIA, LLC , d/b/a Summit Insurance
Agency, LLC, DALE L. TRIPLETT and
NANCY TRIPLETT,

Defendants.

(CORRECTED) REPORT AND RECOMMENDATION

RNIA, LLC , d/b/a Summit Insurance Agency, LLC; Dale L. Triplett; and Nancy Triplett are the only remaining defendants in this case. The remainder of the case settled out of court and stipulated orders of dismissal were entered on: August 24, 2011 (defendants Alliance Financial and Insurance Agency LLC and Ryan Kyes), October 27, 2011 (defendants Jack Snyder d/b/a Nuvescor Group and Randy Rua), and February 2, 2012 (defendant Burr & Company).

Plaintiffs' Fifth Amended Complaint (Dkt. 53) was filed on November 22, 2010. As of the date of this Report and Recommendation, the Triplett defendants have never answered it.

It should be noted that the Triplett defendants have not failed to participate in this case in all respects. They have appeared for noticed hearings, including a settlement conference, and have moved to set aside the default (Dkt. 138). They have also written letters to the Hon. Janet T. Neff, attached as Exhibit A.

However they have been dilatory in responding to discovery and have failed to answer. Default was entered on December 28, 2011 (Dkt. 128). The Triplett's also filed a motion for extension of time to answer (Dkt. 112) which was denied by the Hon. Janet T. Neff (Dkt. 127).

The Triplett's have been repeatedly warned about the possibility of a recommendation that a default judgment be entered against them if they failed to answer the Fifth Amended Complaint and failed to participate generally in the litigation. They state that Mr. Triplett's health problems, financial constraints and the ability to secure legal services related to the former have impeded them. It is also perhaps noteworthy that a Notice of Bankruptcy as to RNIA, LLC, d/b/a Summit Insurance Agency, LLC., Dale Triplett and Nancy Triplett was filed in this court (Dkt. 8) and on May 10, 2010 (Dkt.9) and the case was administratively closed against them. The bankruptcy case was dismissed by Hon. Scott W. Dales, United States Bankruptcy Judge, for their failure to file schedules, statement of affairs, Chapter 13 plan, and mailing matrix (Dkt. 42-3) so this case can proceed against them.

Given that this matter has been pending for over two years, the undersigned recommends that plaintiffs' motion to strike the Triplett's motion to set aside default (Dkt. 138) be denied, that the motion of Dale and Nancy Triplett that default be set aside (Dkt. 136) be denied, and that plaintiffs' motion for default judgment (Dkt. 134) be granted as to liability only and that default judgment for liability only enter against defendants RNIA, LLC, d/b/a Summit Insurance Agency, LLC., Dale Triplett and Nancy Triplett.

The undersigned further recommends that this matter be referred to her for an evidentiary hearing as to damages and for a settlement conference.

Respectfully submitted,

Date: April 12, 2012

/s/ Ellen S. Carmody
ELLEN S. CARMODY
United States Magistrate Judge

OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within 14 days of the date of service of this notice. 28 U.S.C. § 636(b)(1)(C). Failure to file objections within the specified time waives the right to appeal the District Court's order. *Thomas v. Arn*, 474 U.S. 140, 155 (1985); *United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981).